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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of) MM Docket No. 93-94
)
Scripps Howard) File No. BRCT-910603KX
Broadcasting Company)
)
For Renewal of License of)
Station WMAR-TV,) DOCKET FILE COPY ORIGINAL
Baltimore, Maryland)
)
and)
)
Four Jacks) File No. BPCT-910903KE
Broadcasting, Inc.)
)
For a Construction Permit for)
a New Television Facility on)
Channel 2 at Baltimore, Maryland)
To: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

SCRIPPS HOWARD BROADCASTING COMPANY'S REPLY
TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW OF FOUR JACKS BROADCASTING, INC.
ON ISSUES ADDED FEBRUARY 1, 1994

Respectfully submitted,
Scripps Howard
Broadcasting Company

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SUMMARY

Four Jacks' proposed findings demonstrate, once and for all, that Scripps Howard did not misrepresent or lack candor in this proceeding. Four Jacks uses colorful adjectives, misleading juxtaposition of testimony, and simple mischaracterization to attempt to construct a case, but fails miserably in the end.

Four Jacks does not even identify, let alone present evidence, of any motive or reason why Scripps Howard would intentionally withhold information about the NBC facsimiles or the 1992 Covington notes. The supposed motives hinted at by Four Jacks--that Scripps Howard was attempting to hide either its efforts in 1992 to assemble information on ascertainment during the license term for presentation to the Presiding Judge or the original 1992 Covington notes--are ludicrous when examined in light of the evidence. It is impossible to credibly dispute that 1) Scripps Howard had no reason to hide the absence of 1991 documentation of ascertainment, because it had no duty to keep contemporaneous documentation; 2) Scripps Howard never hid its 1992 efforts to assemble its ascertainment and programming exhibits; 3) there was no reason for Scripps Howard to hide the 1992 Covington notes because they are completely consistent with the ascertainment exhibit that was presented at the hearing and support Scripps Howard's right to a renewal expectancy; and 4) there was no reason for Scripps Howard to hide the NBC facsimiles because they were accurately described at Emily Barr's 1993 deposition and, in fact, were produced in advance of the hearing.

Given the absence of any plausible motive to deceive, there cannot be deceptive intent.

Similarly, the evidence, when stripped of Four Jacks' misleading hyperbole and innuendo, establishes that Scripps Howard did not misrepresent or lack candor with respect to either the NBC facsimiles or the 1992 Covington notes. Scripps Howard has presented a logical and credible explanation for the delay in producing the NBC facsimiles that crushes any allegations of misrepresentation: Scripps Howard did not consider them responsive to the discovery request; by the time Emily Barr was deposed she did not recall that the facsimiles had been retained; and when Scripps Howard later became aware of Four Jacks' interest in them, the facsimiles were produced. Similarly, Ms. Barr's reliance on counsel with respect to the 1992 Covington notes was reasonable, and her subsequent inability to recall sending the 1992 Covington notes to counsel is equally reasonable. The delay in producing the 1992 Covington notes is thus entirely logical because Scripps Howard reasonably believed that they had been discarded. In attempting to overcome these facts, Four Jacks sets up a series of straw men, but offers no evidence that refutes the explanations. Scripps Howard, therefore, has carried its burden of proving that it did not misrepresent or lack candor in this proceeding.

Four Jacks' proposed findings on the issue against it are similarly misleading. Four Jacks continues to claim that the Smiths do not regard themselves as employees of Sinclair. But

this claim is preposterous in light of the reams of documents classifying the Smiths as employees, many of which were signed by the Smiths under penalty of perjury. Similarly, Four Jacks claims that the Smiths' state of mind is the only relevant evidence, and their testimony is that they did not believe that they were employees. In addition to being wrong as a matter of law, this, too, is contradicted by the record. The Smiths all testified at the 1993 comparative hearing that they were employees of Sinclair. Four Jacks' findings simply omit all reference to this testimony, proffered well before the issue was added and before the Smiths had a motive to mislead. Finally, despite being charged with the burden of proof on this issue, the Smiths have failed to present any evidence that they do not regard themselves as employees of Sinclair, save their own self-serving testimony given after the issue was added--testimony that contradicts their previous testimony and all of the documentary evidence. These facts, combined with the Smiths' motive to misrepresent--that they wanted to obtain integration credit and could not do so without promising to resign their employment--mandates a finding that the Smiths misrepresented and/or lacked candor in this proceeding, and therefore are disqualified.

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Scripps Howard Broadcasting Company ("Scripps Howard"), by its attorneys, hereby submits its reply to the proposed findings of fact and conclusions of law submitted by Four Jacks Broadcasting, Inc. ("Four Jacks"), on the issues added to this proceeding on February 1, 1994 ("Four Jacks Findings").

I. MISREPRESENTATION ISSUE AGAINST SCRIPPS HOWARD

1. Faced with the unenviable task of building an intentional misrepresentation case without evidentiary support, Four Jacks has chosen to rely on hyperbole and innuendo to insinuate what the facts and the law disprove. Contrary to the condescending and unsupported statements that permeate Four Jacks' proposed findings, Four Jacks has offered nothing to

contradict the facts 1) that Scripps Howard had no motive to misrepresent, 2) that nothing in the record is suggestive of misrepresentation or lack of candor by Scripps Howard, and 3) that any errors or misstatements Scripps Howard may have made in the course of this proceeding were unintentional and utterly without material consequence.

2. Indeed, if any misrepresentation or lack of candor exists, it is in Four Jacks' proposed findings. Four Jacks repeatedly uses transition words to present the appearance of contradictions in the record where they do not exist; dwells on trivial or illusory inconsistencies between the testimony of two Scripps Howard witnesses in suggesting that one of them committed perjury; and makes references to a supposedly "obvious" motive for Scripps Howard to deceive that is never identified. Four Jacks' proposed findings are so improbable and laden with internal inconsistencies as to call into serious question the sincerity of Four Jacks' belief in its own argument.

A. Scripps Howard had no motive to deceive

3. Even though motive to deceive is an essential element of any misrepresentation case, Four Jacks can do no more than hint at such a motive for Scripps Howard to conceal either Janet Covington's 1992 notes ("the 1992 Covington notes") or the facsimile correspondence between Emily Barr¹ and NBC.

¹ Four Jacks chooses to make mention of the fact that "Scripps Howard has yet to report Ms. Barr's departure" from WMAR-TV. Four Jacks Findings at 6 n.3. Scripps Howard did note her promotion to General Manager of a Capital Cities/ABC station in its own proposed findings, though it is under no duty to

Presumably, the alleged motive can be traced to Four Jacks' assertion that "Scripps Howard went to great lengths to make it appear that WMAR-TV had a regular documented ascertainment process between May 30 and September 3, 1991." Four Jacks Findings at 6. Depending on how Four Jacks would define "regular documented ascertainment process," however, this statement is either untrue or immaterial. To the extent that "regular documented ascertainment process" refers to contemporaneous documentation of ascertainment, Scripps Howard had no duty to document its efforts contemporaneously, and it made no effort to create such an appearance. See Report and Order in MM Docket No. 83-670, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 F.C.C.2d 1076, 1097-1101 (1984), aff'd on reconsideration, 104 F.C.C.2d 357, 368-69 (1986). To the extent Four Jacks' phrase means that Scripps Howard had undertaken in 1992 to document that it had engaged in ascertainment efforts on a regular basis during the license term, this is accurate, and it was a wholly proper exercise. Neither interpretation gives rise to any motive to deceive.

4. It can hardly be overemphasized that Four Jacks never identifies Scripps Howard's purported motive in its proposed findings. The closest that Four Jacks comes to explaining Scripps Howard's motive is in the following passage:

report on her career development after the period that is relevant here. Scripps Howard Findings at 6 n. 2

The Covington notes and NBC correspondence have one thing in common--they show that critical documentation for Scripps Howard's renewal expectancy showing was generated a year after the fact. Scripps Howard's motive to keep this fact under wraps is obvious.

Four Jacks Findings at 114. If Scripps Howard's motive to deceive is "obvious" to Four Jacks, Four Jacks fails to articulate it.

5. The purported basis for the mystery motive appears to be Four Jacks' characterization of the absence of contemporaneous documentation of Scripps Howard's ascertainment contacts as some sort of secret of which Scripps Howard had reason to be ashamed. Four Jacks cannot, however, offer any basis for this characterization, because, as noted above, Scripps Howard had no duty to keep such contemporaneous documentation. Instead, Four Jacks appears to have confused--inadvertently or otherwise--the fact that Scripps Howard kept no formal, contemporaneous record of its ascertainment, which it was under no obligation to do, with an insinuation that Scripps Howard did not conduct any ascertainment at all, an insinuation soundly refuted by the record evidence.

6. Indeed, Scripps Howard, while under no duty to document its ascertainment contacts contemporaneously, did have available sufficient contemporaneous documentation--in the form of the calendar entries of the employees involved--to facilitate preparation of a reliable ascertainment exhibit when this became necessary in the wake of Four Jacks' challenge. Furthermore, contrary to Four Jacks' statement that "[a]ll [WMAR employees]

had were their calendars from 1991" to provide ascertainment information, these employees also had their recollections of the meetings documented in their calendars. T. at 664. While, as result of the license challenge, Scripps Howard did transcribe those calendar entries, and the employees' recollections of them, into a format appropriate for review by the parties and the Presiding Judge (i.e., Attachment E to Emily Barr's 1993 direct case testimony), Four Jacks' description of this process as a "massive reconstruction effort" is highly misleading, as Scripps Howard had the information it needed to prepare its ascertainment exhibit. Four Jacks Findings at 71.

7. Even more importantly, if Four Jacks truly means to assert that Scripps Howard's motive to deceive was its desire to keep "under wraps" that the documentation was generated "a year after the fact," Four Jacks cannot reconcile this purported motive with the fact that Scripps Howard was candid from the outset about the timing of its documentation efforts. In Emily Barr's written direct testimony of September 13, 1993, she explained her method of preparing Attachment E to her testimony, which documented WMAR-TV's ascertainment efforts during the 1991 renewal period:

The material in Attachment E was originally prepared in 1992 under my direction from information gathered by individuals working under my supervision. In preparing the attachment, I relied upon my calendar and recollections and the calendars and recollections of Arnold Kleiner and Maria Velleggia. In addition, I relied upon discussions with and notes of Janet Covington, the former Public Affairs Director.

SH3-16 n.6 (emphasis added). Thus, Scripps Howard not only had no reason to hide its post-1991 compilation of its ascertainment documentation; it never made any effort to hide this aspect of its case preparation.

8. Given that Scripps Howard was candid from the outset about the timing of the compilation of its ascertainment documentation, perhaps Four Jacks means to suggest that Scripps Howard sought to hide the 1992 Covington notes because of the content of the notes themselves. This, too, is nonsensical, because 1) the notes contain no new information that is significant to Scripps Howard's ascertainment showing, 2) the notes are fully consistent with Attachment E, and 3) the care and detail with which the notes were prepared strengthens, rather than weakens, Scripps Howard's ascertainment showing. Thus, both the content of the 1992 notes and Scripps Howard's disclosures prior to their discovery make clear that Scripps Howard had nothing to gain by intentionally withholding the 1992 notes from discovery.

9. The motive Four Jacks attributes to Scripps Howard is equally nonsensical when applied to the NBC facsimiles. In July 1993, Ms. Barr told Four Jacks' attorneys that she had obtained programming information from NBC in 1992 and had corresponded with NBC by facsimile in doing so, providing Four Jacks' attorneys with a description of this correspondence. SH36 at 3; T. at 1741-42. Given these facts, Scripps Howard simply could not have intentionally concealed the facsimiles out of a desire

to hide their existence, for at the same time Ms. Barr supposedly lied to conceal the facsimiles, she made Four Jacks aware of the existence and contents of her correspondence.

10. Absence of motive to deceive is a key indication of the absence of deceptive intent. MCI Telecommunications Corp., 3 F.C.C. Rcd 509, 513 (1988). Scripps Howard had no motive to deceive, and Four Jacks has not made any plausible arguments to the contrary. The only motive at which Four Jacks has even hinted--concealment of Scripps Howard's post-1991 preparation of its ascertainment documentation--is both 1) without legal foundation, because Scripps Howard did not do anything that it would need to conceal, and 2) contradicted by the evidence, which shows that Scripps Howard already had disclosed what it supposedly was trying to hide. Without a logical explanation of why Scripps Howard would withhold either the 1992 Covington notes or the NBC facsimiles intentionally, Four Jacks' theory of the case does not merit serious consideration.

B. Scripps Howard did not commit misrepresentation or lack of candor with respect to the NBC facsimiles

11. Four Jacks' repeated mischaracterizations of the events relevant to the issue of the NBC facsimiles betray Four Jacks' awareness of the weakness of its own case. It has offered nothing of substance to contradict Scripps Howard's consistent, logical and understandable explanation for its delay in producing the facsimiles: namely, that it did not consider the facsimiles responsive to Four Jacks' document request; that Emily Barr, at

the time of her 1993 deposition, believed she had not retained a copy of the facsimiles; and that when Scripps Howard became aware of Four Jacks' interest in the facsimiles, Ms. Barr undertook a search and found them "stuck to or in between some other pieces of paper." T. at 1711. The facsimiles then were immediately produced, well before the initial hearing.

1. Four Jacks again mischaracterizes the representations in Scripps Howard's opposition to Four Jacks' attempt to appeal the denial of its request to subpoena NBC

12. Four Jacks makes much of Scripps Howard's October 26, 1993, opposition to Four Jacks' attempt to appeal the Presiding Judge's order denying Four Jacks' effort to subpoena the NBC facsimiles from NBC. In the opposition, Scripps Howard simply expressed its agreement with the Presiding Judge's opinion that there was no reason to delay a hearing to allow Four Jacks to subpoena documents that "may or may not exist" in the files of the target of the subpoena, NBC. Compare Opposition to Request for Permission to File an Appeal of the Order Denying the Request for Issuance of a Subpoena Duces Tecum at 3 with Order FCC 93M-672 (Oct. 22, 1993), at 2. Over and over in this proceeding, Four Jacks has unsuccessfully attempted to turn this plainly true statement about a subpoena to NBC into a representation about the contents of WMAR-TV's files. Now, despite the Presiding Judge's specific statement at the 1994 hearing that this October 26,

1993, pleading was not evidence of any misrepresentation,² Four Jacks asserts in its proposed findings that Scripps Howard's counsel, at hearing on September 8, 1994, had contended "for the first time" that Scripps Howard's representations in that opposition referred to the presence or absence of the facsimiles at NBC, not at WMAR-TV. Four Jacks Findings at 83.³ A review of the record, however, reveals that Four Jacks' assertion is preposterous.

13. Four Jacks characterizes Scripps Howard's argument at the 1994 hearing that the opposition referred to NBC's files as a "belated excuse" that "evidences Scripps Howard's willingness to play fast and loose with the Commission." Four Jacks Findings at 83. Four Jacks conveniently ignores the fact, however, that the recollection of the events put forth by Scripps Howard's counsel during the 1994 hearing was completely accurate, as confirmed by the Presiding Judge:

MR. HOWARD: Ms. Schmeltzer's question assumes that the presence or absence of the document at WMAR-TV is

² JUDGE SIPPEL: . . . And there's nothing in there that's under the circumstances as I-- now, I was right there when this was happening--that would make this appear to be a deliberate attempt to mislead the Commission on anything.

T. at 1705.

³ Furthermore, even if Scripps Howard's October 26 opposition had represented that the NBC facsimiles "may or may not exist" at WMAR-TV, that representation still would have been accurate when made. The opposition was filed before noon on October 26, and as noted in Scripps Howard's proposed findings ("Scripps Howard Findings"), the facsimiles were not discovered at WMAR-TV until that afternoon. Scripps Howard Findings at 10.

a--was an issue with respect to this document, and that is not the case. This was a subpoena to be issued that requested records in the possession of NBC, not of WMAR.

JUDGE SIPPEL: That's true. I remember that.

. . . .

MR. HOWARD: That's [NBC's possession of the facsimiles] what was at issue.

JUDGE SIPPEL: It was, it was a subpoena that was directed to NBC. . . .

T. at 1700-01 (emphasis added). Accordingly, Four Jacks' patronizing assertion that Scripps Howard's recollection "is simply not supported by the evidence or the pleading itself" is flatly wrong. Four Jacks Findings at 114.⁴ The evidence and the pleading establish that the only subject addressed by the October 26 opposition was the existence of documents in the files of NBC, and therefore, it is utterly irrelevant to the issue now before the Presiding Judge. See T. at 1705.⁵

⁴ Four Jacks' statement that "at the hearing Scripps Howard objected vigorously to cross-examination concerning the statements in the [October 26, 1993] Opposition" ignores that the bases for the objections were perfectly valid: 1) Four Jacks had not been able to establish a foundation for questioning Ms. Barr about the contents of the opposition, because she testified that she did not recall reading it before it was filed, and 2) Four Jacks' proffered questions contained the same misrepresentation that is in Four Jacks' proposed findings, namely, that the opposition was referring to WMAR-TV's files, not NBC's. T. at 1699-1706; see Four Jacks Findings at 47-48. The Presiding Judge sustained Scripps Howard's objections. T. at 1706. Finally, Four Jacks' acknowledgment that "[n]o opposition to the subpoena request was ever filed by NBC" is meaningless; because the request was never served on NBC and was denied, NBC never had reason to know about it. See Four Jacks Findings at 48 n.14.

⁵ Four Jacks also states, inaccurately, that the Presiding Judge scheduled the prehearing conference after Scripps Howard filed its October 26 opposition and in spite of Scripps

2. Four Jacks mischaracterizes Ms. Barr's testimony about the existence of the facsimiles

14. Equally inexcusable is Four Jacks' pejorative description of Ms. Barr as "first admitt[ing] on cross-examination that written 1992 correspondence with NBC existed (moments after initially denying it)" Four Jacks Findings at 45. The intimations underlying this statement are plainly disingenuous when compared with the text described. Asked if she had written "any kind of letter" to NBC asking for information, Ms. Barr responded--truthfully--"No, I did not, I made a phone call." T. at 1682-83.⁶ During the same series of questions, when asked if the list of issues she gave NBC following her initial telephone call had been in writing, she responded, "No, it was not. Actually, it was faxed to them." T. at 1683. Given the close proximity of these two statements, it

Howard's pleading. Four Jacks Findings at 114. In fact, the prehearing conference was scheduled before the pleading was filed. See Order FCC 93-678 (released Oct. 27, 1993), at 1 n.1.

Additionally, it should be noted that Ms. Barr's testimony at hearing on November 9, 1993, that the NBC facsimiles "went into a file at the station" was made with the benefit of hindsight, as she made this statement after her October 26, 1993, discovery of the facsimiles in the file. See Four Jacks Findings at 16. Thus, Four Jacks' efforts to show misrepresentation by virtue of contradiction between this statement and Ms. Barr's July 1993 deposition, which was taken before she discovered the facsimiles, falls flat. Four Jacks Findings at 14-16.

⁶ Given that Ms. Barr never wrote "a letter" to NBC asking for information, and that her answer to this question was accurate, Four Jacks' implication of dishonesty on the part of Ms. Barr ("Ms. Barr has not addressed this answer") can only be described as gross mischaracterization. See Four Jacks Findings at 45 n.13.

is preposterous to argue that they reflect any intent to deceive. Four Jacks' advancement of such a suggestion is simply intellectually dishonest.

15. Indeed, given that Four Jacks learned about the facsimiles at Ms. Barr's July 1993 deposition, it is difficult to comprehend precisely what Four Jacks intends to suggest actually happened with the NBC facsimiles. Four Jacks does not explain why Scripps Howard might have wished to conceal the facsimiles themselves when their existence had been disclosed, nor does it offer anything in the contents of the facsimiles that contradicts Ms. Barr's July 1993 description. Scripps Howard's interpretation of the Four Jacks document request as excluding the facsimiles, which were generated long after the end of the relevant renewal period and did not contain any information relevant to Scripps Howard's issues-responsive programming or ascertainment exhibits, was a reasonable one, as the Presiding Judge recognized in Memorandum Opinion and Order FCC 94M-177 (March 18, 1994), at 3 n.2. Ms. Barr's momentary failure to recall the facsimiles nearly a year after they were sent also was reasonable, and Four Jacks does not provide any alternative explanation of why Ms. Barr would "deny" the facsimiles' existence and then disclose their existence seconds later. Indeed, the evidence shows that when Scripps Howard first became aware of Four Jacks' interest in the facsimiles, Scripps Howard undertook an additional search, found the facsimiles, and timely

produced them.⁷ Other than melodramatic language, Four Jacks has offered nothing with respect to the NBC facsimiles to suggest that anything occurred other than Ms. Barr's brief memory lapse about matters Scripps Howard reasonably believed to be irrelevant.

- C. Scripps Howard did not commit misrepresentation or lack of candor with respect to the 1992 Covington notes
- 1. Four Jacks repeatedly mischaracterizes Ms. Barr's and Mrs. Covington's testimony about the ascertainment process

16. Four Jacks' attempt to create the appearance of misrepresentation with smoke and mirrors is even more prevalent in its treatment of the 1992 Covington notes. It begins as early as the initial paragraph of Four Jacks' proposed findings, which attempts to impeach Ms. Barr's direct testimony that WMAR-TV "regularly conducted ascertainment interviews" with community leaders by adding, "Under questioning, however, Ms. Barr admitted that all of the interviews with community leaders between May 30 and September 3, 1993 were 'informal.'" Four Jacks Findings at 6 (emphasis added). The use of "however" suggests an internal inconsistency in Ms. Barr's testimony, but these two statements

⁷ Contrary to Four Jacks' mock surprise, Scripps Howard has never contended that its discovery of the NBC facsimiles on the eve of a prehearing conference on Four Jacks' appeal of its subpoena request to NBC was "miraculous" or even coincidental. Four Jacks Findings at 73. Scripps Howard has acknowledged from the outset that Four Jacks' efforts to subpoena NBC prompted its counsel to ask Ms. Barr to undertake a search for the facsimiles, which resulted in their discovery. This search, rather than reflecting an intent to deceive, reflects Scripps Howard's desire to ensure the accuracy of its representations in this proceeding.

are not the least bit inconsistent. The first sentence accurately states that WMAR-TV conducted regular ascertainment, and the second describes the method by which the ascertainment was conducted.

17. Similarly, Four Jacks' assertion that "[n]o one at the station ever wrote down a list of issues given by community leaders" is false and contrary to the record. Four Jacks Findings at 7. Four Jacks cites the portion of the transcript in which Ms. Barr testified that staff members did not prepare lists of issues after each ascertainment contact. T. at 563. The same page of the transcript, however, includes Ms. Barr's statement that "we were all required to do monthly reports" for the general manager and that "the public affairs director would write a monthly report to me which would indicate issues in general that were of import to the community." T. at 563. Moreover, consistent with the Commission's rules, WMAR-TV prepared issues/programs lists for the relevant period containing a "list of issues" generated by ascertainment efforts. See SH3-0339, SH3-0352. These lists were produced to Four Jacks.

18. Four Jacks' pattern of mischaracterization continues with Janet Covington. Four Jacks' proposed findings unfairly denigrate Mrs. Covington's extensive ascertainment efforts with the following description of her work:

As Director of Public Affairs, Ms. Covington was responsible for reviewing public service announcements, putting out schedules and ascertaining the community, which she said meant going to meetings and dinners.

Four Jacks Findings at 21 (emphasis added). In contrast to this deprecatory description, Mrs. Covington's deposition in fact contains a thorough explanation of her role in the ascertainment process, which included organizing station-sponsored programs, serving on boards of community organizations, sitting on community-issue discussion panels, and conducting individual interviews with community leaders. SH38 at 59-81. Yet Four Jacks, in an effort to paraphrase Mrs. Covington's description of the process, instead relies on a statement she made before this discussion, in response to Four Jacks' request that she describe her responsibilities at WMAR-TV:

I was responsible for reviewing most of the--public service announcements, putting out schedules,--service announcements--for ascertaining the community--going to meetings and dinners and, you know, when--and often when they had town meetings and things like that I was involved in assembling cross-section community audiences, and categorically they were my responsibilities.

SH38 at 11. Given the wealth of information about the ascertainment process that Mrs. Covington provided during her deposition, it speaks volumes about Four Jacks' own candor in this proceeding that it mischaracterizes her description of her ascertainment efforts as simply "going to meetings and dinners."

19. Four Jacks does a similar disservice to Mrs. Covington in its treatment of her involvement in the preparation of WMAR-TV's issues/programs lists. Specifically, Four Jacks asserts:

Ms. Covington claimed that she was involved in the preparation of the station's issues/programs lists, but when shown the second quarter 1991 issues/programs list, she did not recall having seen it and said "[t]his would be totally new." Similarly, Ms.

Covington did not recall ever seeing the Third Quarter 1991 Issues/Programs list.

Four Jacks Findings at 21 (citations omitted). While Four Jacks has crafted a passage that implies either dishonesty or confusion on the part of Mrs. Covington, the text of her deposition reveals that her response was both logical and internally consistent:

Q. During the summer of 1991 were you involved at all in the preparation of the station's Issues Program Lists?

A. Oh, yes. I mean I gave a report on--you know, to Emily like quarterly toward what I thought the primary issues in the community were and that we should be looking to for, you know, the upcoming months or year or long range, and I would give a list and then a further amplification, you know, of what I thought the pulse of the community was.

Q. Now, whose responsibility was it to do the Issues and Programs Lists? Was it yours?

A. It was, it was a shared responsibility. Some of the issues--the final supervisory responsibility was Emily Barr's.

SH38 at 14-15. Moments later, when shown the second quarter issues/programs list, Mrs. Covington said, "No. This is not what I did." SH38 at 15. And then:

But part of what is in here in this final confirmation would come from part of what I submitted. I'm sure, you know, it went into this, but I did not do this clerical or, you know, summation material.

SH38 at 16. Thus, contrary to Four Jacks' representation, Mrs. Covington testified only that she had input into the issues/programs lists, not that she prepared the final product, and her testimony on that subject is perfectly consistent. That Four Jacks felt the need to suggest otherwise simply confirms its

inability to build even the appearance of a case without mischaracterizing the record.

2. Ms. Barr's and Mrs. Covington's testimony about the preparation of the notes provides no evidence of misrepresentation

20. Four Jacks has given the Presiding Judge no reason to question Mrs. Covington's veracity or credibility, nor has it identified any motive for either Mrs. Covington or Ms. Barr to lie about the preparation of the 1992 Covington notes.⁸ Indeed, given that the designated issue involves production of the notes, rather than their preparation, Four Jacks' dogged attempts to poke holes in the testimony concerning the preparation of the notes, which have been thwarted at every turn by the facts, offer nothing in the way of support for Four Jacks' case.

- a. The legibility of the 1992 Covington notes is consistent with Ms. Barr's and Mrs. Covington's testimony

21. Four Jacks claims that the legibility of the 1992 Covington notes is "yet one more instance of Ms. Barr's dubious credibility." However, Four Jacks' description of the 1992 Covington notes as "very legible" is consistent with, rather than undermines, the testimony of Ms. Barr and Mrs. Covington that the latter's poor handwriting was a reason for her desire to provide

⁸ Four Jacks trumpets the fact that "Scripps Howard voluntarily chose to present only one witness, Emily Barr, to testify at the hearing." Four Jacks Findings at 72. This is yet another misstatement. Scripps Howard presented testimony from Ms. Barr and Mrs. Covington at the hearing. It was only the illness of Mrs. Covington's husband that prevented her from testifying in person.

notes, rather than her 1991 calendar, to Ms. Barr. Four Jacks Findings at 23. Given that Mrs. Covington prepared the 1992 notes because the handwriting on the notations in her 1991 calendar, intended solely for her own use, was poor, it would follow logically that in transcribing those notations on her 1991 calendar into the 1992 notes for Ms. Barr's use, Mrs. Covington would make every effort to make the handwriting on the 1992 notes as neat and legible as possible. Furthermore, to the extent that Four Jacks is implying that Ms. Barr lied when she called Mrs. Covington's handwriting "difficult to read," it ignores the corroboration of this testimony by Mrs. Covington herself. SH38 at 43.⁹

- b. Mrs. Covington's testimony about the timing of her preparation of the 1992 notes is internally consistent

22. In discussing the actual preparation of the 1992 Covington notes, Four Jacks presents another illusory contradiction:

Ms. Covington initially said she did not recall whether she looked at one period of time first in preparing the notes, but later said she might have written one set of notes first and another later.

⁹ Four Jacks also attempts to build a case out of Ms. Barr's statement, when she was pressed for a reason why she would have discarded the 1992 Covington notes, that Mrs. Covington's handwriting "was difficult to read." Four Jacks Findings at 79. Of course, it is now known that Ms. Barr was attempting to explain why she might have done something that she, in fact, did not do. Since, contrary to her recollection, she had not discarded the notes but had sent them to counsel, it is not surprising that her speculation was in error.